3667.

SUPREME COURT OF THE UNITED STATES.

No. 110.

CHARLES B. CALVERT AND GEORGE H. CALVERT, PLAINTIFFS IN ERROR,

vs.

JOSEPH H. BRADLEY AND BENJAMIN F. MIDDLETON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLUMBIA, HOLDEN IN AND FOR THE COUNTY OF WASHINGTON.

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GIDEON, print.

THE UNITED STATES OF AMERICA, *ss.*

The President of the United States, to the judges of the circuit court of the District of Columbia, sitting for Washington county, greeting:

[SEAL.] Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court before you, or some of you, between George Calvert and Charles B. Calvert, plaintiffs, and Joseph H. Bradley and Benjamin F. Middleton, defendants, a manifest error hath happened to the great damage of the said plaintiffs, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday in December next, in said Supreme Court to be then and there held; and that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right and according to the laws and custom of the United States should be done.

Witness the Hon. Roger B. Taney, chief justice of said Supreme Court.

Issued this 5th day of November, 1851.

JNO. A. SMITH,
Clerk circuit court, D. C., for Washington Co.

DISTRICT OF COLUMBIA, *sct.*

The United States of America, to Joseph H. Bradley and Benjamin F. Middleton, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the district of Columbia, for the county of Washington, wherein George Calvert and Charles B. Calvert are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said plaintiffs in error should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness the honorable William Cranch, chief judge of the circuit court of the District of Columbia, this 5th day of November, 1851.

Service acknowledged, 6th October, 1853.

JOS. H. BRADLEY,
Defendants' attorney.

Copy of appeal bond.

Know all men by these presents, that we, Charles B. Calvert and Roger C. Weightman, are held and firmly bound unto Joseph H. Bradley and Benjamin F. Middleton, in the full and just sum of two hundred dollars, to be paid to the said Joseph H. Bradley and Benjamin F. Middleton, their certain attorney, executors, administrators, or assigns; to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 5th day of November, 1851.

Whereas lately at a circuit court of the District of Columbia, sitting for the county of Washington, in a suit pending in the said court, wherein the said George Calvert and Charles B. Calvert were plaintiffs, and the said Joseph H. Bradley and Benjamin F. Middleton were defendants, judgment was rendered against the said plaintiffs, and they having obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Joseph H. Bradley and Benjamin F. Middleton, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday in December next:

Now the condition of the above obligation is such, that if the said George Calvert and Charles B. Calvert shall prosecute their writ with effect, and answer all damages and costs, if they fail to make their plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

CHAS. B. CALVERT, [SEAL.]
R. C. WEIGHTMAN. [SEAL.]

Signed, sealed, and delivered in presence of—

Approved by order of the court, November 5th, 1851.

True copy. Test:

JNO. A. SMITH, *Clerk.*

Style of court.

DISTRICT OF COLUMBIA, *to wit.*

At a circuit court of the District of Columbia, begun and held in and for the county of Washington, at the city of Washington, on the fourth Monday of March, being the twenty-fourth day of the same month, in the year of our Lord one thousand eight hundred and fifty-one, and of the independence of the United States the seventy-fifth. Present, William Cranch, chief judge; the honorable James S. Morsell and James Dunlop, assistant judges; Richard Wallach, esquire, marshal; John A. Smith, clerk.

In the record of the proceedings of the said court, amongst others, are the following, to wit:

1669.

Parties.

GEORGE H. CALVERT and CHARLES B. CALVERT against JOSEPH H. BRADLEY and BENJAMIN F. MIDDLETON. } Covenant.

Be it remembered, that heretofore, to wit, on the seventh day of April, eighteen hundred and forty-nine, the said plaintiffs, by Andrew Wylie, jr., esq., their attorney, prosecuted and sued forth out of the circuit court here the United States writ of capias ad respondendum against the said defendants, to the marshal of the district aforesaid directed, in the words and of the tenor following, to wit:

Capias.

DISTRICT OF COLUMBIA, *to wit.*

The United States of America, to the marshal of the District of Columbia, greeting:

We command you that you take Joseph H. Bradley and Benjamin F. Middleton, late of Washington county, if they shall be found within the county of Washington, in your said district, and them safely keep, so that you have their bodies before the circuit court of the District of Columbia, to be held for the county aforesaid, at the city of Washington, on the third Monday of October next, to answer unto George H. Calvert and Charles B. Calvert in a plea wherefore they broke the covenant, &c., &c.

Hereof fail not at your peril, and have you then and there this writ.

Witness William Cranch, esquire, chief judge of our said court, at the city of Washington, the 5th day of April, anno Domini one thousand eight hundred and forty-nine.

Issued the 7th day of April, 1849.

JNO. A. SMITH, *Clerk.*

WYLIE.

And the said plaintiffs, by their attorney aforesaid, on the day of prosecuting and suing forth of the aforesaid writ, declared against the said defendants in the plea aforesaid, in form following, to wit:

Nar.

COUNTY OF WASHINGTON, D. C., *ss:*

Joseph H. Bradley and Benjamin F. Middleton were summoned to answer unto George H. Calvert and Charles B. Calvert, of a plea that they keep with them a covenant, made by Samuel S. Coleman, for himself and his assigns, with the said George H. Calvert and Charles B. Calvert; and thereupon the said plaintiffs, by Andrew Wylie, jr.,

their attorney, complain, for that whereas, heretofore, to wit, on the 17th day of April, 1844, at the county aforesaid, by a certain indenture then and there made, between the said plaintiffs, of the one part, and one Samuel S. Coleman, of the other part, (the counter part of which said indenture, sealed with the seal of the said Samuel S. Coleman, the plaintiffs now bring into court, the date whereof is the day and year aforesaid,) the said plaintiffs, for the consideration therein mentioned, did demise, lease, set, and to farm let unto the said Samuel S. Coleman, his executors, administrators, and assigns, all the two hundred and five three hundred and fifteenth parts, being their joint interest in and *two* a certain house and lot of ground in the city of Washington, embracing the west end of square numbered four hundred and ninety-one, and known as the "National Hotel," to have and to hold the same and the premises for and during the term of five years from and after the first day of August, 1844, fully to be complete and ended.

And the said Samuel S. Coleman did, in and by said indenture, for himself and his executors, administrators, and assigns, covenant, promise, and agree, to and with the said plaintiffs, their heirs, &c., (among other things) in manner following, that is to say, that he, the said Samuel S. Coleman, his executors, administrators, and assigns, from and after the said messuage, &c. should have been put in good repair and tenantable order and condition, by and at the expense of the said plaintiffs, should and would at all times during the continuance of the said demise, at his own cost and charges, support, uphold, maintain, and keep the said house and premises in the like good order and condition as when he received the same, and would at the expiration of the term aforesaid surrender the same in like good repairs; as by said indenture, reference being thereto had, will more fully and at large appear. (Copied in page 23.) By virtue of which said indenture the said Samuel S. Coleman afterwards, to wit, on the 1st day of August, 1844, entered into said demised premises with the appurtenances, and became and was so possessed thereof, for the said so to him thereof granted as aforesaid.

And the said plaintiffs in fact say, that after the making of the said indenture and during the said term, to wit, on the 1st January, 1847, at the District aforesaid, the estate, right, title, interest, and term of years aforesaid, or so much thereof *is* still remained unexpired of the said Samuel S. Coleman, of and in the said demised premises, by assignment thereof, then and there made, legally came to and was possessed by one Cornelius W. Blackwell.

And the said plaintiffs in fact further say, that afterwards, to wit, 16th day of February, 1848, at the district aforesaid, all the remaining unexpired portion of the said term in the premises aforesaid was assigned, transferred, and made over to the said defendants, by the said Cornelius W. Blackwell; whereupon and whereby the said defendants then and there entered into and upon all and singular the said demised premises with the appurtenances, and became and were thereof possessed, and continued so thereof possessed from thence until the 2d

day of August, 1849, when the said demise ended and determined, to wit, at the District aforesaid. And although the said plaintiffs have always, from the time of making the said indenture hitherto, well and truly performed, fulfilled, and kept all things therein contained, on their part to be performed, fulfilled, and kept, to wit, at the District aforesaid. Yet protesting that the said defendants, since the said assignment to them so made as aforesaid, have not performed, fulfilled, or kept any their in the said indenture contained on their part and behalf, as such assignees as aforesaid, to be performed, fulfilled, and kept, to wit, at the District aforesaid; the said plaintiffs in fact say, that although the said hotel and premises, in and by the said indenture demised, were after the making thereof, to wit, at the District aforesaid, and on the 6th day of July, 1844, put in good and tenantable repair, order, and condition by the said plaintiffs, and so delivered into the possession of the said Samuel S. Coleman, agreeably to the terms and stipulations contained in the indenture aforesaid; yet the said defendants did not, nor would after the said assignment to them, and during the continuance of the said demise, and whilst they were so possessed of the said demised premises with the appurtenances as aforesaid, at their own cost and charge, support, uphold, maintain, and keep the said tenements and appurtenances of the said demised premises in the like good order and condition as when they were demised as aforesaid, nor did at the expiration of the term aforesaid surrender the same in like good repair, according to the form and effect of the said indenture in that behalf; but on the contrary thereof they, the said defendants, after the making the said indenture and after said assignment to the said defendants as aforesaid, and during the continuance of the said demise, and whilst they were so possessed of the said demised premises with the appurtenances as aforesaid, to wit, on the 1st day of April, 1848, and from thence for a long space of time, to wit, from thence until the determination of said term, suffered and permitted the said hotel, tenements, and premises so devised as aforesaid to be and continue, and the same were, for and during all that time ruinous, prostrate, fallen down, and in great decay, for want of useful and necessary maintaining, supporting, upholding, and keeping the same; and the said defendants, at the determination of the said term, left the same premises so out of repair, and in such bad order and condition as last aforesaid, contrary to the form and effect of the said indenture and of the covenant so made by the said Samuel S. Coleman, for himself and his assigns, as aforesaid, to wit, at the district aforesaid. And so the said plaintiffs in fact say, that the said defendants (although often thereto requested) have not kept the said covenants so made by the said Samuel S. Coleman, for himself and his assigns, with the said plaintiffs in manner and form aforesaid, but have broke the same, and to keep the same with the said plaintiffs have hitherto wholly refused, and still refuse so to do, to the damage of the said plaintiffs of $6,000, and therefore they bring suit, &c.

ANDREW WYLIE, JR., *for plaintiffs*.

October term, 1849.

At which mentioned third Monday of October, in the year eighteen hundred and forty-nine, and the day of the return of the aforegoing writ, come into the circuit court here the said plaintiffs by their attorney aforesaid; and the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thus endorsed, to wit:

Return of marshal, and appearance of defendants.—Rule plea.

"Cepi.

R. WALLACH, *Marshal.*"

And the said defendants, being called, appear in court here, by Joseph H. Bradley, esquire, their attorney; whereupon on motion of the said plaintiffs, by their attorney aforesaid, it is ruled by the court here that the said defendants answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof.

Imparlance to March term, 1850.

Whereupon the said defendants, by their attorney aforesaid, defend the force and injury, when, &c., and pray leave of the court here to imparle until the fourth Monday of March next, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, and to them it is granted. The same day is given to the said plaintiffs also.

At which mentioned fourth Monday of March, in the year eighteen hundred and fifty, to which said day the said defendants had leave to imparle, and then to answer to the declaration aforesaid of the said plaintiffs in the plea aforesaid, come again into the circuit court here as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid.

Pleas by defendant.

And the said defendants, by their attorney aforesaid, say: 1st. That the said supposed indenture, in the said declaration mentioned, is not the deed of the said Samuel S. Coleman, as the same is in manner and form therein pleaded; and of this they put themselves upon the country, &c.

2d. And the said defendants for further plea in this behalf, by leave of the court first had and obtained, &c., say, that all the estate, right, title, interest, term of years then to come and unexpired, property, profit, claim, and demand whatsoever of the said Samuel S. Coleman, of, in, and to the said premises, with the appurtenances, by assignment thereof, did not come to or vest in them, the defendants, in manner and form as in the said declaration is above alleged; and of this they put themselves upon the country, &c.

3d. And the said defendants for further plea in this behalf, by leave of the court here, &c., further say, that on the 16th day of February, 1848, they received and accepted from a certain Cornelius W. Blackwell, of the city of Washington, a certain deed purporting and intended to be a deed of trust for the purposes and intents therein mentioned, in the words and figures following; (copied in page 23;) and on or about the 6th day of March, 1849, the said Cornelius W. Blackwell ran away and absconded from the city of Washington, without having paid the debts, or any part thereof, in said deed mentioned, and leaving rent of said premises in arrear to the 1st day of January, 1849, due and payable, and the said rent being so due and payable, the said plaintiff, for himself, and as bailiff of his tenant in common of said premises, in order to secure and enforce the payment thereof, entered into and upon the said premises in said deed mentioned, and took possession thereof, and claimed the right to hold the same, and then threatened to levy a distress upon the personal property in said deed mentioned and found on said premises, and to sell the same, as well for the rent aforesaid due to himself individually, as also as bailiff of the other tenants in common of said premises, and was in fact about to levy the said distress as aforesaid for himself and as bailiff as aforesaid, and at the same time, he, said plaintiff, for himself, and as bailiff of the said tenants in common, demanded of Joseph R. Thompson, Lusby and Duvall, John H. Gibbs, and others, severally sub-tenants of said Cornelius W. Blackwell, of several premises, parts of said premises in said deed of trust mentioned, the rents due by them for, upon, and on account of their said respective demises to said Blackwell, and thereupon these defendants were required by the creditors in said deed of trust mentioned to take possession of the said goods, chattels, and personal*ly* property in said trust-deed mentioned, for the benefit of said creditors, and to sell the same in execution of the trusts in said deed contained; and they in fact say, that protesting that they did not claim, take, or hold the said leasehold interest by virtue of said deed, or under the said direction of said creditors, they took possession of said goods, chattels, and personal property in said deed mentioned, in and upon the said demised premises, and not otherwise; and being so in possession of said personal property, they did then and there, to wit, on or about the 11th day of March, 1849, enter into an agreement with said plaintiff, under protest as aforesaid, that out of the proceeds of the sales of said goods, chattels, and personal property they would pay to the said plaintiff and to the other tenants in common of said premises with said plaintiff, the rent which was then due by said Blackwell for and on account of said premises, and the rent which might thereafter fall due to the 1st day of May then next, on condition that they, these defendants, might keep the said goods, chattels, and personal property on the said premises, prepare the same for sale, and then sell the same on or before the said first day of May, 1849, the said plaintiff to waive his said right to a distress thereof, and the said defendants to have the right of ingress, egress, and regress unto and upon said premises for the pur-

poses aforesaid, and the said plaintiff and his said tenants in common thereof to retain their said possession of said premises, subject only to said limited right of said defendants to use the same for the purpose of keeping, preparing, and selling said goods, chattels, and personal*ly* property; and the said plaintiff did thereafter in fact take the possession of said premises, and retain the same to this day; and they aver that they did in fact, under this last mentioned agreement, keep the said goods, chattels, and personal property on said premises, and did sell the same then, and out of the proceeds of said sale did pay the whole rent of said premises to said plaintiff and his said tenants in common to the said first day of May, 1849. And these defendants deny, that they ever were in possession of said demised premises, or consented to receive the same or were required to take possession thereof under and by virtue of said demise in said declaration mentioned, or by virtue of any assignment thereof; and this they are ready to verify, wherefore they pray judgment, &c.

4th plea. And for further plea in this behalf, by leave of the court here first had and obtained, say, that on the day of 18 , they received and accepted from a certain Cornelius W. Blackwell, of the city of Washington, a certain deed purporting and intended to be a deed of trust for the purposes and intents therein mentioned, in the words and figures following, to wit, (copied in page 30;) and on or about the 6th day of March, 1849, the said Cornelius W. Blackwell ran away and absconded from said city without having paid the debts, or any part thereof, in said deed mentioned, and leaving rent in arrear and due upon said demised premises to the 1st day of February, 1849, and the said rent being so due and payable, the said plaintiff, for himself and as bailiff for his tenants in common of said premises, in order to secure the payment of said rent so as aforesaid due and payable, entered into and upon said demised premises in said declaration mentioned, and took possession thereof, and claimed the right to hold the same, and threatened to levy a distress on the goods, chattels, and personal property in said deed mentioned and found on said premises, and to sell the same as well for the rent so as aforesaid due and in arrear to said plaintiff, as also for the rent due and in arrear as aforesaid to the said tenants in common of said plaintiff, and was in fact about to levy the distress as aforesaid on the said goods, chattels, and personal property aforesaid, and also in his own behalf and as bailiff as aforesaid, demanded of Joseph R. Thompson, Lusby & Duvall, and John H. Gibbs, and others, severally sub-tenants of said Cornelius W. Blackwell, of several and separate tenements, parts of said premises in said declaration mentioned, the rents due by them respectively for and on account of their said several and respective demises to said Blackwell; and thereupon these defendants were required by the creditors in the said deed of trust mentioned to take possession of the said goods, chattels, and personal property in the said deed of trust mentioned, and then being on the said premises in said declaration mentioned, for the benefit of said creditors, and to sell the same in execution of the trusts in said deed contained; and they in fact say, that protesting that they did not claim,

take, or hold the said leasehold interest by virtue of said deed or under the said direction of said creditors, they took possession of said goods, chattels, and personal property last mentioned, and not otherwise; and being so in possession of said personal property, then did, then and there, to wit, on the 11th day of March, 1849, at the county aforesaid, enter into a certain agreement with said plaintiff, under protest as aforesaid, that these defendants should keep the said goods, chattels, and personal property aforesaid on the said premises, prepare the same for sale, and sell the same at any time before the 1st day of May then next ensuing; that said plaintiff should and thereby did agree to waive his right to a distress thereof, that said defendants should have the right of ingress, egress, and regress, as the same should be necessary for the purposes aforesaid, into and upon the said demised premises for the purposes aforesaid, and out of the proceeds of said sale should pay the rent of said demised premises to the 1st day of May, 1849, and the said plaintiff should retain the possession of said demised premises, subject only to the said limited rights of said defendants to use the same for keeping, preparing for sale, and selling the said goods, chattels, and personal property; and the said plaintiff, being so as aforesaid in possession thereof, did in fact retain the same, and doth retain the same to this day; and these defendants did sell the said goods, chattels, and personal property, and out of the proceeds of the sale thereof did in fact pay the said rent of said premises to said 1st day of May, 1849; and the said plaintiff, being so as aforesaid in possession of said demised premises, did before the said 1st day of May, 1849, and before the time limited for the expiration of said demise in said declaration mentioned, offer the said premises for rent to other persons, and did proceed to such repairs, alterations, additions, enlargements, and improvements therein as to him seemed fit and convenient and proper, and thereby did utterly prevent these defendants from making any repairs therein, and putting the same before the expiration of said term in like good order and condition as was required in and by said indenture of demise in said declaration mentioned; and this they are ready to verify, wherefore they pray judgment, &c.

Demurrer to third and fourth pleas.

And the said plaintiffs, as to the said pleas of the said defendants by them thirdly and fourthly above pleaded, say, that the same, and the matters therein contained respectively, in manner and form as the same are above pleaded and set forth in the said several pleas, are not sufficient in law to bar or preclude them, the said plaintiffs, from having or maintaining their aforesaid action thereof against the said defendants, and that they, the said plaintiffs, are not bound by law to answer the same. And this they, the said plaintiffs, are ready to verify; wherefore, by reason of the insufficiency of the said several pleas in this behalf, the said plaintiffs pray judgment, and their damages by reason of the not performing of the said covenants and undertakings in the said declaration mentioned to be adjudged to them, &c.

Continuance to October term, 1850.

But because the court here are not advised to give their judgment of and upon the premises, whereof the parties aforesaid have put themselves upon the judgment of the court, day therefore is given to the parties aforesaid before the court here, on the third Monday of October next, to hear their judgment of and upon those premises, because the court now here thereof are not as yet, &c., &c.

At which mentioned third Monday of October, in the year eighteen hundred and fifty, to which said day the said cause was continued, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid; whereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attorneys aforesaid, and by order of the court here thereon, the said cause is further continued until the fourth Monday of March next.

Continuance to March term, 1851.

And now at this day, to wit, the said fourth Monday of March, in the year eighteen hundred and fifty-one, come again into the circuit court here, as well the said plaintiffs, by their attorney aforesaid, as the said defendants, by their attorney aforesaid.

Judgment on demurrer for defendants.—Costs.

Whereupon all and singular the premises being seen, and by the court here fully understood, it appears to the court here that the said pleas by the said defendants in form aforesaid pleaded, and the matter in the same contained, are good and sufficient in law to preclude the said plaintiffs from having and maintaining their action aforesaid against the said defendants; therefore it is considered by the court here, that the said plaintiffs take nothing by their writ and declaration aforesaid, but that they be in mercy for their false claim thereof, and that the said defendants go thereof without day. It is also further considered by the court here, that the said defendants recover against the said plaintiffs the sum of ten dollars and fifty-five cents for their costs and charges by them about their defence in this behalf sustained, to the said defendants by the court now here adjudged, according to the form of the statute in such case made and provided.

Test: JNO. A. SMITH, *Clerk.*

Indenture of 17th April, 1844, *referred to in the declaration, page* 9.

This indenture, made this seventeenth day of April, in the year of our Lord one thousand eight hundred and forty-four, between George H. Calvert and Charles B. Calvert, of the State of Maryland, Roger C. Weightman, of the city of Washington, and District of Columbia, Philip Otterback, of the same place, William A. Bradley, of the same place, and Alexander Hunter, guardian of Robert Wallach, of the

same place, all of the first part, and Samuel S. Coleman, of the city of New York, of the second part; witnesseth: That the said parties of the first part being the owners in severalty of that property situate in the city of Washington, and now known as the "National Hotel," embracing the west end of square numbered four hundred and ninety-one on the plan of said city, and being entitled therein in the following proportions, that is to say—the whole of the said property being divided into three hundred and fifteen shares or equal parts, and each share valued at five hundred dollars: the said George H. Calvert and Charles B. Calvert jointly own two hundred and five shares thereof, Roger C. Weightman owns sixty-six shares, Philip Otterback twenty-two shares, William A. Bradley twenty shares, and Robert Wallach, represented by his guardian, Alexander Hunter, two shares; and the said parties of the first part, for and in consideration of the yearly rents and covenants hereinafter reserved and contained on the part and behalf of the said Samuel S. Coleman, his executors, administrators, and assigns, to be paid, reserved, and performed, have, and each of them hath demised, granted, and to farm let, and by these presents do, and each of them doth, demise, grant, and to farm let unto the said Samuel S. Coleman, his executors, administrators, and assigns, all that messuage and messuages, tenement and tenements, situate on the western part of square numbered four hundred and ninety-one in the city of Washington, now and lately in the occupation of William Gadsby, and known as the "National Hotel," with all and singular the rights of way and water, and all and singular the other members and appurtenances thereof:

To have and to hold the said messuages, tenement and tenements, and all and singular the premises aforesaid, with the appurtenances, to the said Samuel S. Coleman, his executors, administrators, and assigns, from the first day of August next ensuing the date hereof, for, during, and until the full end and term of five years thence next ensuing, and fully to be complete and ended, yielding and paying therefor during the said term unto the said George H. Calvert and Charles B. Calvert, their heirs and assigns, for the first year of the said term the sum of four thousand one hundred dollars, for the second year the sum of five thousand one hundred and twenty-five dollars, for the third year the sum of five thousand six hundred and thirty-seven dollars and fifty cents, and for the fourth and fifth years each, respectively, the sum of six thousand one hundred and fifty dollars, in and by even and equal portions, on the first day of each and every month during the said term; and unto the said Roger C. Weightman, his heirs and assigns, for the first year of the said term the sum of thirteen hundred and twenty dollars, and for the second year the sum of sixteen hundred and fifty dollars, and for the third year the sum of eighteen hundred and fifteen dollars, and for the fourth and fifth years each, respectively, the sum of nineteen hundred and eighty dollars, payable in like equal proportions on the first day of each and every month during the said term; and unto the said Philip Otterback, his heirs and assigns, for the first year of the

said term the sum of four hundred and forty dollars, and for the second year the sum of five hundred and fifty dollars, and for the third year the sum of six hundred and five dollars, and for the fourth and fifth years each, respectively, six hundred and sixty dollars, payable in like equal portions on the first day of each and every month during the said term; and unto the said William A. Bradley, his heirs and assigns, for the first year of said term the sum of four hundred dollars, and for the second year the sum of five hundred dollars, and for the third year the sum of five hundred and fifty dollars, and for the fourth and fifth years each, respectively, the sum of six hundred dollars, payable in like equal portions on the first day of each and every month during the said term; and unto the said Alexander Hunter, guardian of said Robert Wallach, and to the heirs and assigns of said Robert Wallach, for and during the first year of the said term the sum of forty dollars, and for the second year fifty dollars, and for the third year fifty-five dollars, and for the fourth and fifth years each, respectively, the sum of sixty dollars, payable in like equal portions on the first day of each and every month during the said term; the said rent to be free and clear of all deductions for taxes and assessments of every kind and nature whatever levied, charged, or assessed, or which shall or may hereafter by any lawful authority be levied, charged, or assessed on the said above described premises, or on the rent issuing therefrom; and also to each and every of said parties of the first part, for each and every share owned by them respectively as aforesaid, the sum of two dollars, in lieu of insurance, for each and every year of the said term; and also to the proprietors of the spring from which the said hotel is supplied with water the annual rent of twenty-five dollars.

And the said parties of the first part, for themselves, their heirs, executors, and administrators, jointly and severally, covenant and agree, to and with the said Samuel S. Coleman, his executors, administrators, and assigns, that they, the said parties of the first part, shall and will deliver the possession of the said premises to the said Samuel on or before the sixth day of July next, and that they will expend the sum of three thousand dollars, or so much thereof as may be necessary in putting the said hotel, with its out-buildings and appurtenances, in good repair and tenantable order and condition; and that he, the said Samuel S. Coleman, his executors, administrators, and assigns, keeping and performing all the covenants herein contained on his and their part to be kept and performed, shall and may peaceably and quietly the said hotel, with its appurtenances, during the term aforesaid, casualties by fire alone excepted; and in the event of any accident by fire interrupting the use and enjoyment thereof, at any time or times during the said term, a reasonable and proportionable deduction of the said rent reserved shall be made, until said injury by fire shall be repaired by the said parties of the first part, their heirs and assigns; and in the event of a total destruction by fire of said hotel, with the appurtenances, the said rent and all the covenants on the part of said Samuel S. Coleman herein shall cease and be determined.

And the said Samuel S. Coleman, for himself, his executors, ad-

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ministrators, and assigns, hereby covenants and agrees to and with the said parties of the first part, jointly and severally, their and each of their heirs and assigns, to pay the said rent reserved at the time and times respectively, and in the manner herein before reserved; and also the said taxes, assessments, and public dues, and also the said sum of two dollars per share as aforesaid, in lieu of insurance as aforesaid, and also the said rent of twenty-five dollars for the use of the said water; and that during the said term he will keep the said hotel, with the messuages and appurtenances aforesaid, during the said term, in like good order and condition as when he receives the same, and will at the expiration of the term aforesaid surrender the same in like good repair.

And it is hereby expressly mutually agreed by the parties hereto, that in case the said Samuel S. Coleman, his executors, administrators, and assigns, shall fail to pay the said rents reserved and taxes during the said term, at the time and times hereinbefore reserved, so that either three months' rent shall be due and unpaid, or the said property shall be advertised for sale for taxes, then it shall and may be lawful for the said parties of the first part, or a majority of them in interest, upon giving one month's notice to quit, to proceed against the said party of the second part, his executors, administrators, or assigns, and to terminate the holding under this lease, as in case of a tenant holding over, and to regain the possession of the said premises in the same manner as if the said term was hereby limited to the day which shall be mentioned in said notice.

In testimony whereof the said parties to these presents have hereunto interchangeable subscribed their names and affixed their seals, on the day and year first hereinbefore written.

SAM'L S. COLEMAN, [SEAL.]
CHAS. B. CALVERT, [SEAL.]
R. C. WEIGHTMAN, [SEAL.]
PHILIP OTTERBACK, [SEAL.]
G. H. CALVERT, [SEAL.]
A. HUNTER, [SEAL.]
Guardian for R. R. W.
W. A. BRADLEY. [SEAL.]

Signed, sealed, and delivered in presence of—
RICHARD WALLACH,
As to R. C. W., P. O., A. H., and C. B. C.
GEORGE E. WATRISS,
As to S. S. Coleman.
EDWIN D. WALLARD,
As to W. A. Bradley.

I, G. H. Calvert, the undersigned, representing the joint interest of my brother, C. B. Calvert, and myself in the National Hotel, do hereby guarantee to S. Coleman that the whole amount of three thousand dollars, mentioned in the above lease for putting the said hotel in good repair, will be expended thereon by the proprietors.

G. H. CALVERT.

Deed trust from Cornelius W. Blackwell to Joseph H. Bradley and Benjamin F. Middleton, referred to in defendants' third plea, page 14.

C. W. Blackwell to Joseph H. Bradley and B. F. Middleton.

Deed of trust, recorded 17th February, 1848.

This indenture, made this sixteenth day of February, in the year of our Lord one thousand eight hundred and forty-eight, between Cornelius W. Blackwell, of the city of Washington, and District of Columbia, of the first part; Philip Otterback, of the same place, of the second part; Samuel Little, of the same place, of the third part; Benjamin F. Middleton and Benjamin Beall, trading under the firm of Middleton & Beall, of the same place, of the fourth part; and Joseph H. Bradley and Benjamin F. Middleton, of the same place, of the fifth part: Whereas the said Cornelius W. Blackwell now stands indebted to the said Philip Otterback in the sum of seven thousand dollars, for which he hath given to the said Otterback his promissory note, bearing date on or about the 18th day of January, 1848, payable two years after its date, with interest:

And he is also indebted to the said Samuel Little, in the sum of three thousand dollars, for which he has given to the said Samuel his promissory note bearing date on or about the 18th day of January, 1848, drawn payable to the order of Benjamin F. Middleton, and by him endorsed and delivered to said Samuel, payable one year after date with interest:

And he is also indebted to the said Middleton and Beall, in the sum of twelve hundred and sixty-three dollars and twenty-eight cents, for which he hath given to them his promissory note payable to their order, dated on or about the 18th day of January, 1848, at two years after date with interest:

And whereas, the said Middleton and Beall may hereafter become creditors of the said Cornelius W. Blackwell, for goods sold, or money lent, or both, or become liable for the said Cornelius W. as endorsers, sureties, acceptors, guarantors or otherwise, and the said Cornelius W. Blackwell is desirous, as well to secure the said parties of the second and third parts, the full payment of the said debts above mentioned; and also to secure to the said Middleton and Beall the payment of the said debt due to them as aforesaid, as also to indemnify and save harmless the said Middleton and Beall, and each of them, jointly and severally, from and against any and all loss and damage they may otherwise be put to by reason of their giving credit to, endorsing for, guarantying or securing the payment of any debt of the said Cornelius, at his request, at any time within six years and six months next ensuing the date hereof, to any and every amount not exceeding in the aggregate the sum of twenty thousand dollars at any one time; and hath for the purposes and objects aforesaid proposed and offered to execute this deed:

Now this indenture witnesseth: That the said Cornelius W. Blackwell, in consideration of the premises, and for the further consideration of five dollars to him by the said Joseph H. Bradley and Benjamin F. Middleton in hand paid, the receipt of which he doth hereby acknowledge, hath granted, bargained, sold, transferred, assigned, set over and delivered, and doth hereby grant, bargain, sell, transfer, assign, set over and deliver to the said Joseph H. Bradley and Benjamin F. Middleton, and the survivor of them, their and his executors, administrators, and assigns, all and singular the goods, chattels, household stuffs, implements, furniture and stock in trade, now in, or which at any time hereafter during the continuance of this trust shall and may be in the buildings, and in, upon and about the premises known as "The National Hotel," in the city of Washington, or by whatsoever name the same shall or may be known or called, together with the good will of the said hotel and business, and the rest and residue, and remainder of the unexpired term and lease of the said Cornelius W. Blackwell of and in the said premises.

To have and to hold all and singular the premises aforesaid, with their and every of their incidents and appurtenances to and unto, and to the use of the said Joseph H. Bradley and Benjamin F. Middleton, and the survivor of them, their and his executors, administrators and assigns, upon trust nevertheless, to, for and upon the following uses, intents and purposes, and to, for and upon no other use, intent or purpose whatsoever, viz: upon trust to permit the said Cornelius W. Blackwell, his executors, administrators and assigns, to retain the possession, use and enjoyment thereof, with the right to dispose of the same in the course of his said business, and to employ them therein without the let or hindrance of the said trustees or cestui que trusts, until default made by him or them in the payment of some one or more of the said debts, or some part thereof, whether it be in the payment of some one or more of the said notes or of some part thereof; or of some note or notes given in lieu or by way of renewal of some one of them, or of some part of one or more of them, the intent being to secure the payment of the debt; or until some default made by him in the payment of some debt which he may hereafter contract with and owe to said Middleton and Beall, payment thereof having been first reasonably demanded by them; or until he shall fail fully to indemnify and save harmless the said Middleton and Beall, and each and every of them, from and against any loss and damage by reason of their or either of them having endorsed, guarantied, accepted or become surety for, or for the use of the said Cornelius W.

And upon this further trust, that if the said Cornelius W. shall fail to pay or to cause to be paid either or any of said debts, or any part thereof, or if he shall fail to pay any debt which he shall or may hereafter contract with the said Middleton and Beall, or any debt for which they shall or may hereafter, for his use and benefit, be or become, or be made liable; or if he shall fail to pay the rent of the said hotel premises according to the tenor of the lease and demise thereof; or if he

shall suffer judgment to be recovered against him, whereby the said property may become subjected to the payment thereof; and also in the event of the death of the said Cornelius W. Blackwell, leaving the said debts or liabilities now contracted or which may hereafter be contracted as aforesaid, unpaid; in any and every such event, on the application of the holders of said notes, or any of them, or of said Middleton and Beall, or either of them, in writing addressed to said trustees or the survivor of them, the said trustees and the survivor of them shall and may take possession of the said property hereinbefore conveyed and sell the same, or so much and such parts thereof as may be found necessary; and such sale shall be made at public auction, and on such terms and conditions as to the said trustees or the survivor of them may seem best and most to the interest of all the parties interested herein; and before making such sale, public notice thereof shall be given by advertisement inserted in some newspaper printed and published in the city of Washington, setting forth the time, place and terms of such sale, which shall be published at least twice a week for two weeks, next before and on the day of sale; and out of the proceeds of such sale the said trustee and trustees shall pay, in the first place, the costs and expenses of executing this trust, including a commission to the trustees, not exceeding five per cent. on the gross amount of such sale; next apply the said proceeds to the payment of all and every the said debts, liabilities and responsibilities so as aforesaid due, or which may hereafter be contracted as aforesaid, pro rata, if the said proceeds shall not be sufficient to pay the whole; and the surplus, if any, pay over to the said Cornelius W. Blackwell, his executors, administrators and assigns.

And the said Cornelius W. Blackwell for himself, his executors and administrators, hereby covenants and agrees to and with the said Benjamin F. Middleton and Joseph H. Bradley, and the survivor of them, their and his executors, administrators and assigns, that he and his executors and administrators will cause the said property hereinbefore conveyed to be well and sufficiently insured against loss and damage by fire, to the amount of twenty-five thousand dollars, and the same so well and sufficiently insured shall and will continually keep during the continuance of this trust, and the policy and policies thereof shall and will assign to the said trustees, and the survivor to follow the purposes of this trust, and in default thereof that the said trustees may insure the same, and charge the expenses thereof to this trust. And also that he and they shall and will at any and all times during the continuance of the said trust, make, execute, acknowledge and deliver such other and further deeds and assurances as shall and may by the said trustees, or the survivor of them, be deemed necessary fully to convey and assure the said property to the said trustees and the survivor of them, their and his executors, administrators and assigns, upon trusts, to secure the payment of the said debts, liabilities and securities aforesaid.

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In testimony of all which the said Cornelius W. Blackwell hath hereto set his hand and affixed his seal, the day and year first hereinbefore written.

C. W. BLACKWELL, [SEAL.]

Signed, sealed and delivered in presence of—
B. K. MORSELL,
J. M. WRIGHT.

I hereby certify that I witnessed the delivery, by C. W. Blackwell, of one chair to the trustees named in the foregoing deed, in the name of the whole property therein mentioned, conveyed in the day and year aforesaid.

B. K. MORSELL.

DISTRICT OF COLUMBIA,
Washington county, to wit:

Be it known, that on this sixteenth day of February, eighteen hundred and forty-eight, Cornelius W. Blackwell personally appeared before me, the subscriber, a justice of the peace in and for the county aforesaid, and acknowledged the foregoing deed to be his act and deed.

Acknowledged before B. K. MORSELL, *J. P.*, [SEAL.]

Test: JNO. A. SMITH, *Cl'k.*

Writ of error produced.

And whereas, afterwards, to wit, on day of eighteen hundred and fifty , the said plaintiffs, by their attorney aforesaid, produced and filed in court here the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the judges of the circuit court of the District of Columbia, sitting for the county of Washington; and in pursuance thereof, and according to the form and effect of the law in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, are hereby transmitted to the said Supreme Court accordingly.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court, this 16th day of July, 1853.

[L. S.]

JNO. A. SMITH, *Cl'k.*